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Argued by
RANDALL J. LEBOEUF, JR.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 211

NIAGARA HUDSON POWER CORPORATION,
Petitioner,

v.

M. VICTOR LEVENTRITT,
Respondent.

No. 212

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

M. VICTOR LEVENTRITT,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR NIAGARA HUDSON POWER CORPORATION

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Opinions Below

The opinion of the Court of Appeals (R. 122-126, 128) is reported in 179 F. 2d 615. The opinion of the District Court (R. 107-112) is reported in 86 F. Supp. 697. The findings and opinion of the Securities and Exchange Com-

mission, dated August 16, 1949, and its order dated August 25, 1949 have not yet been officially reported, but are set forth in the Commission's Holding Company Act Releases Nos. 9270, 9295 (R. 48-95, 103-104).

Grounds of Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit (R. 128) reversing the order of the District Court for the Northern District of New York (R. 113-119) comes before this Court on a writ of certiorari granted October 9, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, made applicable by Section 25 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79y).

Statutes Involved

The pertinent provisions of Section 11(b) and 11(e) of the Public Utility Holding Company Act of 1935 are set forth in Appendix A, *infra*, pages ~~18~~ 19 to ~~20~~ 21.

Question Presented

Where, in connection with a reorganization and liquidation of a public utility holding company, the Securities and Exchange Commission has found that, under the "fair and equitable" standard of Section 11 of the Public Utility Holding Company Act, no participation should be given to option warrants issued by the holding company entitling the holders thereof to purchase stock of the holding company at a price greatly in excess of the current market value of the stock, and greatly in excess of any rational forecast of the future value of said stock, may the Court of Appeals require participation in the reorganization for such option warrants solely because the option warrants were previously traded in the market at some value?

Statement of the Case

Niagara Hudson Power Corporation (Niagara Hudson) is a registered holding company under the Public Utility Holding Company Act of 1935 (the Act). This case involves plans filed by Niagara Hudson under Section 11(e) of the Act providing for the reorganization of the Niagara Hudson System and for the ultimate dissolution of Niagara Hudson, the top holding company. One of the issues before the Commission and the District Court, and the principal question dealt with by the opinion of the Court of Appeals, was whether under the "fair and equitable" standard of Section 11(e) any participation should be accorded to the Class B option warrants (the warrants) of Niagara Hudson. Other aspects of the plans filed by Niagara Hudson, which do not concern the warrants, are not the subject of controversy in this proceeding.

At the times of filing of the plans Niagara Hudson had outstanding certain notes payable to banks, first and second preferred stock, common stock and Class B option warrants. The warrants represented options to purchase, at any time, common stock of Niagara Hudson, each warrant entitling the holder thereof to purchase 1-1/6 shares of such common stock at a price of $50.00 per share, or at the rate of $42.86 per share (R. 52).

Both plans were filed by Niagara Hudson under Section 11(e) for the purpose of complying with the provisions of 11(b) (2) of the Act, and the Commission's order and requirements thereunder (R. 54, 58-59). The first of the plans (herein referred to as the "Consolidation Plan"), which has been consummated and is in no respects challenged in this proceeding, provided for the consolidation of Niagara Hudson's three principal operating subsidiaries into a new corporation known as Niagara Mohawk Power

Corporation (Niagara Mohawk). Pursuant to the Consolidation Plan, Niagara Mohawk issued all of its common stock to Niagara Hudson, and the preferred stock of Niagara Mohawk was issued on a share for share basis to the preferred stockholders of the constituent companies.

The second plan (herein referred to as the "Dissolution Plan"), which was contingent upon the Consolidation Plan becoming effective, called for the exchange of all the outstanding preferred stock of Niagara Hudson for Class A convertible stock of Niagara Mohawk, and for the exchange of all the common stock of Niagara Hudson for common stock of Niagara Mohawk upon certain terms and conditions stated in the plan. It was contemplated by the Dissolution Plan that after the payment of Niagara Hudson's outstanding bank loans and the transfer of Niagara Hudson's miscellaneous assets to Niagara Mohawk, Niagara Hudson would be dissolved. No provision was made in the Dissolution Plan for the outstanding option warrants, and the rights of the warrant holders were to be terminated as of the effective date of the plans.

The proceedings with respect to both plans were consolidated, and after hearings the Commission on August 16, 1949 issued its findings and opinion approving, with certain modifications which were thereafter made (R. 97-102), both plans as necessary to effectuate the provisions of Section 11(b) of the Act, and as "fair and equitable" to the persons affected by the plans.

Application was thereafter made by the Commission to the District Court for the Northern District of New York to enforce and carry out the terms and provisions of the plans. Respondent, who had not appeared at the hearings before the Commission, entered an appearance in the District Court for the purpose of challenging the Com-

mission's determination that no participation should be accorded to the holders of the Niagara Hudson warrants. After hearing, the District Court rejected the respondent's contentions, and an order enforcing the plans was entered on November 4, 1949.

Respondent appealed to the United States Court of Appeals for the Second Circuit, which reversed that part of the order of the District Court enforcing the provisions of the Dissolution Plan relating to the warrants, and remanded the proceedings to the Commission for further action in accordance with the Court's opinion.

The Issues Raised

In considering the fairness of the plans the Commission reviewed the earnings and operations of Niagara Hudson for the years 1937-1948, and appraised the forecasts of future earnings and probable dividends submitted by expert witnesses and company officials. It then considered separately the treatment accorded by the plans to the holders of the preferred stocks of the three subsidiary companies which were to be consolidated, and to the holders of each class of the outstanding securities of Niagara Hudson.

The Commission's conclusion that the warrant holders were not entitled to participate in the assets was based upon the following findings (R. 82):

> "Under the plans, no provision is made for participation of the Class B. stock option warrants of Niagara Hudson and all rights represented by such warrants will terminate upon the dissolution of that company.
>
> The option warrants entitle their holders to purchase at any time 497,191-3/6 shares of Niagara Hudson common stock, each warrant entitling the

holder to 1-1/6 shares upon payment of $50. This is equivalent to an exercise price of $42.86 for one share. Since 1932, the Niagara Hudson or predecessor company common stock has never sold at a price higher than 18¼ and has sold as low as ⅞. During the same period, the option warrants have never sold higher than 5 and have been as low as ⅛. In 1948, the prices for the option warrants ranged from a high of 1 to a low of ⅛, and in 1949, from a high of ¼ to a low of ⅛.

In considering the participation to which option warrant holders may be entitled, the test is basically the same as that applied with respect to the other types of securities, that is, what value, if any, is being given up by the surrender of the rights attaching to that security. The price of $42.86, which a holder of an option warrant would have to pay for one share of Niagara Hudson common stock, is more than 30 times the estimate we have used of $1.39 as foreseeable earnings which would be applicable to that stock on the basis of present investment if Niagara Hudson were to continue. That price is about 3.5 times the recent high market prices for the Niagara Hudson common stock of around 12 per share.

If we were to assume that Niagara Hudson were to continue and its common stock were to sell in the future at a ratio of 15 times consolidated earnings, which would appear to be a very liberal assumption, it would require per share earnings of $2.86 to result in a price of $42.86 per share. Such earnings would represent an increase of 106% over the approximately $1.39 of earnings which we have found attributable to the present investment. On the basis of the more likely assumption that the price-earnings ratio at which the Niagara Hudson common stock would sell would be something less than 15 times, an even greater increase in earnings would be required to attain a per share price of $42.86.

> Under all the circumstances, we cannot find that there is a reasonable expectation that the market price of Niagara Hudson's common stock would exceed the exercise price of the option warrants within the foreseeable future. Accordingly, we find that such option warrants have no recognizable value[59] and that the plans satisfy the standard of fairness and equity with respect to such option warrants in excluding them from any participation in the reorganization of Niagara Hudson."

The Court below accepted the Commission's earnings forecast and agreed that such forecast indicated a value for the common stock equal to about 1/3d of the exercise price of the warrants. It asserted, nevertheless, that there was no evidence "substantial or insubstantial" to support the Commission's findings that the warrants were wholly worthless, and suggested that the market history indicating that from time to time the warrants had been sold at prices ranging from 1/8 to 5 was evidence that the warrants possess some positive value.

In effect, the Court below rejected the Commission's valuation which was based upon foreseeable future earnings and foreseeable market price of Niagara Hudson common stock, if that corporation were to continue in existence, and rejected the Commission's conclusion that the past market history of the warrants did not justify participation of the warrants in reorganization. The issue squarely raised is whether the Court may substitute

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"[59] We recognize that the holders of the option warrants have a right to purchase common stock at any time, and that this perpetual feature has some present value no matter how remote or speculative the exercise of the right may be. The value to be accorded that right, however, in this case, is so small that as a practical matter we would not be justified in recognizing it for the purposes of a Section 11 reorganization. *Cf. Electric Power & Light Corporation*, —— S.E.C. —— (1949), Holding Company Act Release No. 8880."

its own valuation for that of the Commission and require some participation for the warrants in the Niagara Hudson Section 11 reorganization merely because the warrants were traded for value in the past.

Specification of Errors

The Court of Appeals erred:

(1) In holding that the evidence of past earnings and a forecast of future earnings, and of the past and a forecast of the future market value of the Niagara Hudson stock, upon which the warrant holders held a call, was not evidence, "substantial or insubstantial," upon which to base a valuation of the warrants.

(2) In holding that the evidence of past market value of the warrants required the Commission to ascribe some value to the warrants in a Section 11 reorganization.

(3) In exceeding the scope of judicial review by substituting its evaluation of the weight of the evidence for that of the Commission, and by substituting its judgment of the inferences to be drawn from the history of past trading in the warrants for that of the Commission.

(4) In failing to affirm *in toto* the order of the District Court enforcing the plan.

POINT I

The Commission's findings were supported by substantial evidence.

As indicated above, the Commission's conclusion that the warrant holders were not entitled to participate in the reorganization of Niagara Hudson was based upon an

estimate that if Niagara Hudson were to continue as a going enterprise its common stock would not in the foreseeable future sell at a price which would make advantageous the exercise by the warrant holder of the privilege to purchase such stock. This estimate assumed that Niagara Hudson might reasonably be expected to show average earnings in the future which would leave $1.39 per share for the common stock and that the price-earnings ratio at which the stock might sell would not exceed 15 times. This forecast is supported by voluminous evidence in the record, including the historic record of past earnings, the record of the market price of the stock since 1932 and by the opinion of the expert witnesses. The Court below neither challenged the reasonableness of the forecast nor the evidence upon which it was based.

Since the warrant holder's contract entitles him to purchase Niagara Hudson common stock at $42.86 per share, it is obvious, as the Commission pointed out, that the Niagara Hudson stock must sell at more than 30 times the foreseeable earnings for the exercise privilege of the warrant to be of any value. The Commission, quite properly, rejected a 30-times earnings market price as a reasonable possibility, and assumed instead a ratio of not more than 15 times earnings. On this basis Niagara Hudson would have to earn $2.86 per share to result in a market price of $42.86—earnings which the Commission concluded were not reasonably foreseeable for Niagara Hudson, a regulated public utility.

In view of its forecast, the Commission concluded, "Under all the circumstances we cannot find that there is a reasonable expectation that the market price of Niagara Hudson's common stock would exceed the exercise price of the option warrants within the foreseeable future."

Although the opinion below does not specify in detail the reasons for the conclusion that there is no evidence, "substantial or insubstantial", to support the Commission's conclusions, the suggestion is implicit that the Court rejects as evidence a forecast of reasonably foreseeable earnings and market prices and requires the Commission to speculate as well on *unforeseeable* conditions. It is submitted that this Court and lower courts recognize that a reasonable forecast of prospective earnings is the primary criterion for the purpose of determining the extent to which any class of security should be allowed to participate in a reorganization under Section 11(e) of the Act. *Securities and Exchange Commission* v. *Central-Illinois Securities Corp.*, 338 U. S. 96, 130; *Otis & Co.* v. *Securities and Exchange Commission*, 323 U. S. 624, 631-32; *Lahti* v. *New England Power Association*, 160 F. 2d 845 (CA 1); *In re Community Gas & Power Co.*, 168 F. 2d 740 (CA 3), cert. den., 384 U. S. 846; *In re Electric Power & Light Corp.*, 176 F. 2d 687 (CA 2). This standard of valuation, which has long been accepted in bankruptcy reorganization* proceedings, is equally applicable to reorganizations under Section 11.

Since the Court below does not deny, and in fact, recognizes that there is evidentiary support in the record for the Commission's forecasts, its conclusion can only be premised upon a theory that such forecasts do not constitute evidence. As indicated by the cases cited, reasonable forecasts of earnings and market prices are regarded as evidence supporting conclusions as to valuation. It is submitted, therefore, that the determination of the

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* *Consolidated Rock Products* v. *DuBois*, 312 U. S. 510, 525-26; *Group of Institutional Investors* v. *Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U. S. 523, 540-542; *Ecker* v. *Western Pacific Railroad Corp.*, 318 U. S. 448, 483.

Court below that there was no evidence to support the Commission's conclusions, is based upon a misapplication of the law.

There is ample evidence in the record that no reasonable forecast of future earnings of Niagara Hudson would indicate a market value for its stock, were it to continue as a going concern, in excess of, or even approaching the exercise price of the warrants. There is, thus, "substantial" evidence to support the Commission's conclusion that the warrants have no recognizable value in this Section 11 proceeding.

POINT II

The Commission was not bound to recognize past market value as a primary criterion in evaluating the warrants.

The Court below took cognizance of the market history of the warrants over a period of years and concluded, "So far, therefore, as a long series of sales is evidence of value, the warrants had substantial value." Intrinsic value, rather than market value, however, has invariably been adopted by the courts in appraising securities for the purposes of reorganization. *Group of Institutional Investors* v. *Milwaukee, St. Paul & Pacific Railroad Co., supra; In re American & Foreign Power Co.*, 80 F. Supp. 514; *In re Central States Power & Light Corporation*, 74 F. Supp. 360; *In re United Gas Corporation*, 58 F. Supp. 501, aff'd 162 F. 2d 409. Although the Commission gave full recognition to the market history of the warrants, it was not required to consider anything but intrinsic value.

Only recently the United States Court of Appeals for the Third Circuit had occasion to discuss this question in

In re Commonwealth & Southern Corporation, 184 F. 2d 81. In that proceeding, the appellant, as here, challenged a determination of the Commission in a Section 11 reorganization that the warrants of Commonwealth & Southern Corporation were entitled to no participation. There, as here, the appellant laid great stress upon the asserted market values of the warrants in the past. In dismissing this contention, the Court of Appeals for the Third Circuit said (p. 85):

> "It is said that the Commission should have been governed solely by what is asserted to have been their market value in determining the worth of the warrants. In support of this a chart is offered covering the years from 1931 to 1948. This shows that the annual mean prices of the common stock and of the options have a ratio of approximately eight to one. Appellant contends that the Commission must allow participation by the warrant holders in that proportion. We disagree. Were the proportionate table submitted by appellant a far more accurate gauge of market value than it is, it would still be only some evidence of going business value and in no wise controlling. Such evidence is only remotely connected, if at all, with a determination of the going business value of an option warrant, which is the test laid down by the Otis and Engineers opinions. The Commission had before it evidence which it was entitled to accept, that the possibility of future earnings of Commonwealth sufficient to establish value in the warrants was extremely remote. That evidence is not eliminated or necessarily rendered less credible, simply because there was testimony from which some value could be attributed to the stock. At any rate, we think the option prices during the years covered represent, to a large extent, out and out market

> gambling, plus (since the existence of the Commission and its consideration of this case) deliberate speculation as to what the Commission's course would be in connection with the option warrants in question."

Market values of option warrants are arrived at through the exercise of a speculative judgment of traders in the market place. They represent the expression of a gambler's guess as to future market price of the security which the warrant holder, under his contract, has an option to purchase. This aleatory valuation is manifestly unsound and manifestly contrary to the purpose of Congress in delegating to the Commission the valuation of securities in Section 11(e) reorganization proceedings.* The Commission was, thus, more than justified in refusing to consider that evidence of past trading was evidence of intrinsic value.

The insistence of the Court below, that past market value *per se* is evidence of intrinsic value, is contrary to law.

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* The Court below expressed the view that in *Otis* v. *Securities and Exchange Commission, supra,* values had been ascribed to securities whose value was "quite as speculative" as that of the warrants. In the *Otis* case, however, the Court was not dealing with warrants representing an option to purchase stock, the holders of which had no interest in the corporation until exercise, but with common stock which would be entitled to a substantial equity in the corporation if the arrearages of preferred dividends were paid off. The Commission's forecast of future earnings in that case indicated that the preferred arrears would be eliminated within fifteen years and therefore, concluded that some equity should be ascribed to the common stock in the reorganization, since there was a foreseeable equity if the corporation should continue as a going concern. The speculative feature to which the Court refers was premised upon foreseeable earning and not upon past history of market trading.

POINT III

The Court below has exceeded the scope of judicial review.

This Court has recently defined the degree of finality which must be accorded to administrative findings as to valuation in *Securities and Exchange Commission* v. *Central-Illinois Securities Corp., supra.* There the late Mr. Justice Rutledge said (p. 126):

> "Administrative finality is not, of course, applicable only to agency findings of 'fact' in the narrow, literal sense. The Commission's findings as to valuation, which are based upon judgment and prediction, as well as upon 'facts,' like the valuation findings of the Interstate Commerce Commission in reorganizations under §77 of the Bankruptcy Act, * * * are not subject to reexamination by the court unless they are not supported by substantial evidence or were not arrived at 'in accordance with legal standards.'"

The Commission's conclusions were here based upon the facts of past earnings and past market value of the Niagara Hudson stock and upon its judgment and prediction as to future earnings and future market values for such stock. Both of these criteria have, as indicated above, been approved by this and lower courts as proper evidentiary and legal standards which the administrative agency may consider and adopt. The Commission's findings here are, therefore, final and not subject to reexamination and redetermination by the Court below.

The decision of the Court below would seem to indicate that evidence is to be regarded as substantial only if there is no other evidence from which a different inference might be drawn. Such a theory is clearly untenable and at variance with the settled doctrine that questions as to

the weight to be given evidence, or as to the inferences to be drawn therefrom, are to be resolved by the fact finding administrative agency and not by the reviewing court. *Wilmington Trust Co.* v. *Helvering*, 316 U. S. 164; *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126; *National Labor Relations Board* v. *Link-Belt Company*, 311 U. S. 584; *South Chicago Company* v. *Bassett*, 309 U. S. 251.

It is thus clear that even if the evidence of past market value of the warrants were an acceptable criterion in evaluating the participation of such warrants in Section 11(e) reorganization, the Court would not be empowered to require the Commission to give recognition to such market value if there were other substantial evidence upon which the Commission had relied. The argument is again well stated in the opinion of the Court of Appeals for the Third Circuit in the *Commonwealth & Southern* case, *supra* (p. 83), "Assuming that the Commission had before it conflicting evidence as to value, that part of the evidence on which the Commission based its finding is not destroyed, and with the scope of our review limited as it is, though we might disagree with the result reached, so long as that result is supported by substantial evidence, we are without power to alter it."

It is not disputed that the evidence of the past market value of the warrants was before the Commission and recognized by it. It only appears that the Commission's conclusion was based upon the more compelling evidence that neither the past market history and earnings, nor the foreseeable future earnings, indicated that Niagara Hudson stock would ever sell at a price in excess of the exercise price of the warrants. This same type of evidence underlies the Commission's similar determination in the *Commonwealth & Southern* case and was described by the Court of Appeals for the Third Circuit as "well within the substantial evidence rule".

The warrant holder has no rights whatever in the corporation until he elects to exercise his privilege to purchase its stock. In the case of the Niagara Hudson warrants, which are described as "perpetual", the right exists only as long as Niagara Hudson continues as a going concern. The Commission, however, did not base its decision in any way upon the fact that the plans filed contemplated the imminent dissolution of Niagara Hudson (which it is now indicated will take place on December 2, 1950), but followed the principles dictated by this Court in *Otis* v. *Securities and Exchange Commission*, 323 U. S. 624, and evaluated the warrants from the standpoint that Niagara Hudson would continue as a going concern. On this basis, and assuming a liberal estimate of the market value of the common stock of Niagara Hudson at 15 times consolidated earnings, it appeared an increase of about 106% over the reasonably foreseeable earnings of the corporation would be required to make the value of its stock approximate the exercise price of $42.86 per share, payment of which would be required of the warrant holder before becoming entitled to any rights as a security holder in the corporation. The Commission thus concluded that the warrants had no recognizable value.

The compelling force of the reasons underlying the Commission's conclusions was recognized by Judge Clark in a separate opinion, concurring in the result of the opinion below:

> "* * * The opinion cites and relies only on these market quotations and does not mention the strong case the Commission builds to show that, except for a gambler's chance in the market, the warrants will never produce results from the holders. This is based on past, present, and prospective earnings, and the small possibilities of increased income in this state-regulated utility to a point where the vast gap between present values and those necessary

to make the warrants usable will be made up; it represents in general the values soundly to be put upon the various security interests in any but a speculative market."

Whether or not, however, the Court below agrees with the result reached by the Commission is immaterial. The scope of its review is limited to an inquiry as to whether the Commission relied upon substantial evidence and whether correct legal standards were used.

The correctness of the legal standards applied by the Commission in arriving at its valuation—past earnings and prices and foreseeable future earnings and prices of Niagara Hudson stock—is unassailable. The evidence supporting such determinations and forecasts is undisputed even by the Court below. The Commission's determination is, therefore, not subject to judicial review irrespective of the opinion of the Court below as to the weight which it would accord to the past market history of the warrants.

CONCLUSION

For the reasons stated, the decision and judgment of the United States Court of Appeals for the Second Circuit should be in all respects reversed and the decision of the District Court for the Northern District of New York, as originally entered, should be affirmed.

Respectfully submitted,

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Dated: November 13, 1950.

APPENDIX A

Excerpts from Section 11 of the Public Utility Holding Company Act of 1935

"Sec. 11

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

* * * * * * * * * * *

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

Appendix A

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

* * * * * * * * * * *

(c) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary compan thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such

extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed."